

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CHRISTOPHER RYAN GEORGE, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-10-3235
§
HARRIS COUNTY, TEXAS, *et al.*, §
§
Defendants. §

ORDER

This court dismissed Christopher Ryan George's complaint on May 24, 2011, with leave to amend by June 24, 2011. (Docket Entry No. 20). George failed to file an amended complaint by the deadline. On June 28, 2011, the defendants moved to dismiss, with prejudice. (Docket Entry No. 23). The following day, George filed an amended complaint, adding parties and new causes of action. (Docket Entry Nos. 24, 25). In his amended motion for leave to amend, George explains that the short delay resulted from his attorney's eight-week-long illness. (Docket Entry No. 28). George's counsel's illness provides good cause to extend the filing deadline. *See* FED. R. CIV. P. 16(b)(4); *Gonzales v. AutoZone, Inc.*, Civ. A. No. H-09-4054, 2010 WL 4722462, at *2 (S.D. Tex. Nov. 15, 2010) (explaining the Rule 16(b)(4) standard). The motion to dismiss for untimely filing is denied.

The defendants' argument on the merits is fairly general and, on this record, does not provide a basis to deny leave to amend and dismiss with prejudice. The primary bases for dismissal are prosecutorial immunity and the limits on municipal liability. Although prosecutorial immunity, when applicable, is broad protection from litigation and liability, the application of prosecutorial immunity can depend on the facts. *Odd v. Malone*, 538 F.3d 202, 209 (3d Cir. 2008) (noting "the

fact-based nature of the prosecutorial immunity inquiry"). For similar reasons, courts often allow limited discovery into whether there is an evidentiary basis for a good-faith assertion of the pattern or practice necessary to show municipal liability. *See, e.g., Buckner v. City of Victoria*, Civ. A. No. V-08-09, 2008 WL 4057929, at *4–5 (S.D. Tex. Aug. 26, 2008); *Estate of Sorrells v. City of Dallas*, 192 F.R.D. 203, 210–11 (N.D. Tex. 2003). The motion for leave to amend is granted.

A hearing is set for **August 26, 2011, at 8:30 a.m.** in Courtroom 11-B, to discuss what limited, targeted discovery might be appropriate and to set a motion and briefing schedule on the threshold issues in the case. With respect to the class allegations, George must file a statement by **August 15, 2011** defining with greater precision the proposed class and identifying under which section of Rule 23(b) he seeks certification.

SIGNED on August 2, 2011, at Houston, Texas.



Lee H. Rosenthal
United States District Judge